

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**FREDRICK E. BROMLEY**

Claimant

**V.**

**BRADKEN, INC.**

Respondent

AND

**TRAVELERS INDEMNITY COMPANY  
OF AMERICA**

Insurance Carrier

Docket No. 1,070,583

## ORDER

## STATEMENT OF THE CASE

Claimant appeals what it terms a June 29, 2015, refusal by Administrative Law Judge (ALJ) Steven J. Howard to schedule this matter for regular hearing. Matthew L. Bretz of Hutchinson, Kansas, appeared for claimant. Frederick J. Greenbaum of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

The record on appeal is the same as that considered by the ALJ and consists of all pleadings contained in the administrative file. There are no hearing or deposition transcripts in the file.

## ISSUE

Does the Board have jurisdiction to consider claimant's appeal?

## FINDINGS OF FACT

Claimant alleges he sustained a left leg injury as the result of an August 8, 2012, work accident. Ultimately, claimant's left leg was amputated below the knee. On June 29, 2015, a prehearing settlement conference (PHSC) was held in this matter. Claimant alleges he reached maximum medical improvement and following the PHSC, he requested the ALJ set the claim for regular hearing, but the ALJ refused. The Application for Review states that claimant, "pursuant to K.S.A. 44-551, hereby makes application to the [Workers] Compensation Board for review of the Administrative Law Judge Steven Howard's

June 29, 2015, refusal to allow Claimant to schedule a Regular Hearing following the Pre Hearing Settlement Conference.”

Claimant’s brief alleges the ALJ exceeded his jurisdiction by failing to set this matter for regular hearing. Claimant provided information concerning several other cases where the ALJ purportedly required multiple PHSCs. Claimant argues K.S.A. 2012 Supp. 44-523(d) allows “a” PHSC, not multiple PHSCs.

Respondent asserts that on the date of the PHSC, claimant was engaged in a vocational rehabilitation program and will not graduate until December 2015. Respondent is paying the cost of the vocational rehabilitation program and is paying claimant temporary total disability payments until he completes the program. Therefore, claimant is not prejudiced by the delay of the regular hearing. Respondent argues the Board does not have jurisdiction over the issue claimant appealed because there was no decision, finding, order or award of compensation and because the issue raised is procedural.

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2012 Supp. 44-523, in part, states:

(a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

. . .

(d) Not less than 10 days prior to the first full hearing before an administrative law judge, the administrative law judge shall conduct a prehearing settlement conference for the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing.

K.S.A. 2012 Supp. 44-534a(a)(2), in part, provides:

A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee’s employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

K.S.A. 2012 Supp. 44-551(i)(2)(A) states, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a, and amendments thereto, a review by the board shall not be conducted

under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

K.S.A. 2012 Supp. 44-555c(a), in part, provides:

There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.

The Board has jurisdiction to review decisions of ALJs only to the extent provided in the Act. The Board has jurisdiction to review preliminary hearing orders as to disputed issues of compensability as specifically set forth in K.S.A. 2012 Supp. 44-534a(a). The Board also has jurisdiction to review preliminary hearing orders under K.S.A. 2012 Supp. 44-551 if it is alleged that the ALJ exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing. Pursuant to K.S.A. 2012 Supp. 44-551, the Board is provided with jurisdiction to review final orders, awards, or modifications of awards entered by an ALJ.

This Board Member finds the Board has no jurisdiction to consider the issue raised by claimant on appeal for the following reasons:

1. Claimant did not file a motion or some other written pleading requesting a regular hearing. The proceedings were not recorded by a court reporter and the ALJ issued no written order, decision, finding or award of compensation. Without a written order or hearing transcript, there is nothing to appeal, as noted in K.S.A. 2012 Supp. 44-555c(a).

2. Claimant asserts the ALJ exceeded his jurisdiction by refusing to set this matter for regular hearing and, therefore, under K.S.A. 2012 Supp. 44-551, the Board has jurisdiction. This Board Member disagrees. K.S.A. 2012 Supp. 44-551(i)(2)(A) provides that if an ALJ has entered a preliminary award under K.S.A. 44-534a, the Board may not review the matter unless it is alleged the ALJ exceeded his or her jurisdiction. As pointed out above, no preliminary order was entered by ALJ Howard.

3. Even if the ALJ's refusal to set this matter for regular hearing constitutes a preliminary order, the Board does not have jurisdiction because this is not one of the jurisdictional grounds for appealing a preliminary hearing order set forth in K.S.A. 2012 Supp. 44-534a. Further, the appeal does not concern an appealable ruling.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.<sup>1</sup> Accordingly, claimant's appeal is dismissed.

**WHEREFORE**, the undersigned Board Member dismisses claimant's appeal for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2015.

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HONORABLE THOMAS D. ARNHOLD  
BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant  
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Frederick J. Greenbaum, Attorney for Respondent and its Insurance Carrier  
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Honorable Steven J. Howard, Administrative Law Judge

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<sup>1</sup> See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).